



Before the Electricity Ombudsman
9/2, 6th Floor, Mahalakshmi Chambers, M.G.Road,
Bangalore

Present: B.R.Jayaramaraje Urs, IAS (Retd.)

Electricity Ombudsman

Case No.OMB/H/G-118/2011/1074

Dated 27.06.2012

Between

M/s.Shreyas Paper Mills Private Limited,
 No.203/A, Township,
 Near Simpi Samaja,
 DANDELI-581325
 Uttara Kannada District
(Represented by Sri Pramod N.Shanbhag,
AGM(E)

.. Appellant

Vs

1) Asst. Executive Engineer (E)
 O & M Sub-Division,
 HESCOM
DANDELI
(Represented by M/s.Justlaw, Advocates)

2) The Consumer Grievance Redressal Forum (CGRF),
 HESCOM,
 Keshavapura, Shivaganga Layout,
 Bijapur Road,
 HUBLI-25

.. Respondents

1. This is an appeal under the provisions of KERC Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004 against the orders passed by the

Consumer Grievance Redressal Forum (hereinafter referred to as the 2nd Respondent) vide No. UÁ@ Á/ CYS-4 dated 05.07.2011 in respect of the Appellant's grievance relating to levying of Back billing charges for Rs.8,61,418/- by the Asst.Executive Engineer, O & M Sub-Division, HESCOM, Dandeli (hereinafter referred to as the 1st Respondent) and rejection of his prayer by the 2nd Respondent to issue directions to the 1st Respondent not to collect the Back Billing Charges. Aggrieved by the orders of the 2nd Respondent (the impugned order), the Appellant has submitted his case as under:

2. The Appellant is an Electricity Consumer of HESCOM under H.T 2(a) tariff category. Electrical installation bearing R.R No H.T-33 stands in the name of the Appellant. The Appellant is a Private Limited Company engaged in the manufacture of Duplex Paper Board, Match Box, Hosiery and Cracker Boxes. The Unit was established in the year 1993 with a contract demand of 900 K.V.A.

3. In 1996, Department Of Energy, Government of Karnataka issued a Notification exempting Effluent Treatment Plants (here in after referred to as E.T.P) from power cuts. The Appellant fixed a separate meter for E.T.P and the 1st Respondent would come and take the readings along with H.T reading.

4. As per 2001 Government Notification, all the E.T.Ps in the State were given a tariff concession of Rs.0.50 per unit, if the electricity was supplied by the 1st Respondent exclusively from its grid. The concession was extended without any ceiling on consumption either under 1st slab of Rs.3.50 tariff or under 2nd slab of Rs.4.30. The 1st Respondent supplied power to the E.T.P at a concessional rate as per Government Notification till October, 2008. In November 2008, the 1st Respondent raised a Back Bill for Rs.8,61,418/- on the ground that the consumer had fixed a private meter not approved by the 1st Respondent. However, from 2001, the meter was calibrated periodically by the 1st Respondent and the bill raised for seven years at a concessional rate and there was no suggestion to the Appellant that it had to fix a meter approved by the 1st Respondent and, hence, it could be

presumed that the meter fixed by the Appellant had the approval of the 1st Respondent.

5. The 1st Respondent gave incentive to the base industry belonging to the Appellant by applying 1st slab rate without any ceiling on the consumption. The E.T.P should have also been treated as part of the base industry and whatever concession extended to the base industry should have been extended to the E.T.P. If this formula is applied, then Back Billing charges would become irregular.

6. E.T.P s come under H.T 2(a)(ii) tariff category and had to be billed under the 1st slab without any ceiling on consumption. Under the 2nd slab, a rebate of Rs 0.50 was allowed out of regular tariff of Rs 4.30 per unit for consumption exceeding 1 lakh units inclusive of power consumed by the E.T.Ps.

7. As per Section 26 of Indian Electricity Act, 1910, the consumer could procure and install a meter, failing which the Licensee was required to supply meters. Under 55(1) of the Electricity Act, 2003, meter could be hired by the licensee or the consumer could elect to have his own meter. As per G.M's letter dated 07.11.2008, the Appellant was entitled for Rs.0.50 rebate per unit and, hence, Back Billing is wrong.

8. From 2005, Demand Charges for E.T.P was raised from Rs.170/- to Rs.180/- per K.V.A. In the same Sub-Division, the 1st Respondent has extended rebate to M/s.West Coast Paper Mills though it had fixed its own meter. The 1st Respondent advised M/s.West Coast Paper Mills to fix a meter and, in case of M/s.Shreyas Paper Mills, no such advice was given and, hence, prayed this Authority to set aside the impugned order and to direct the 1st Respondent to withdraw the bill raised for the back period.

9. The 1st Respondent's comments were called vide letter No OMB/H/G-118/2011/10607 dated 22.07.2011 and the 1st Respondent has furnished his comments vide letter No AEE (E)/DNL/AAO/SA/A-30/4837 dated 01.08.2011.

10. In his comments, the 1st Respondent has admitted having extended a rebate of Rs.0.50 per unit for the ETP in question from 29.12.2000 as per KPTCL Notification KPTCL/B-36/5705/C/2000-01/2614 dated 20.12.2000 on the ground that reading of the ETP meter had been entered in the H.T Reading Book. Later, it had been pointed out by the G.M.(Tech/Admin & H.R.D), HESCOM vide letter No: HESCOM/G.M(T)/E-5/08-09/4285-92 dated 07.11.2008 that the rebate had been extended incorrectly and, hence, back bill should be raised from February 2001 to October 2008 for Rs.8,61,418/-.

11. Further, the 1st Respondent admitted that HESCOM had not fixed the meter to ETP and there had been no record in writing as stated by the consumer that he had requested for permission to install a separate meter to the ETP. The 1st Respondent admitted that it had granted permission to M/s.West Coast Paper Mills to install its own meter and, on similar lines, it could have granted permission to the Appellant, if such a request had come from the Appellant's side. The 1st Respondent denied the Assistant Executive Engineer having intimated the Appellant orally to purchase a meter. Hence, the 1st Respondent prayed this authority to confirm the orders passed by the 2nd Respondent.

12. The matter was taken up for hearing on 24.02.2012 and, on behalf of the Appellant, A.G.M (Electrical & Utility), M/s.Shreyas Paper Mills Pvt.Ltd., Sri Pramod Shanbhag appeared and advanced his arguments. On behalf of the 1st Respondent, the Asst Executive Engineer, O & M Sub-Division, Dandeli appeared and put forth his arguments. The case was heard on different dates and during the course of the hearing Advocates Shri Sriranga and Smt.Sumana Nagananda filed vakalats on behalf of the 1st Respondent and put forth their arguments. The arguments from both sides got concluded on 08.06 2012.

13. During the hearing, the representative of the Appellant reiterated the submissions made in the appeal memo. The Advocate for the 1st Respondent, filing additional written response, submitted that the present case came under the category of prejudicial use of power and this Authority had no jurisdiction and,

hence, the Appellant could be advised to approach the Appellate Authorities specified under Clause 44.00 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. A copy of the additional written response filed before this authority was supplied to the Appellant during the hearing.

14. The Advocate for the 1st Respondent in her additional written response submitted that the KPTCL vide its Notification dated 20.12.2000 had provided for supply of power at a concessional rate for ETPs. In keeping with the same, for the period between February 2001 and October 2008, the Appellant accrued the benefits of power at concessional rates. However, during this entire period, the meter installed by the Appellant was one fixed by the Appellant itself and not one fixed by the Distribution Company. The Appellant had installed one Electro-mechanical meter to measure ETP consumption without following Regulation 26.02 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

15. The Advocate added that the E.T.P, being a separate installation, ought to have a separate meter fixed by the Distribution Company, as it was to be billed at a separate tariff. In the present case scenario, there was a prejudicial use of power by the Appellant herein as per Clause 42.00 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and, therefore, a supplemental bill had been raised in compliance with Clause 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and provisional assessment order on account of prejudicial use of power under Clause 42.07 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

16. The Advocate added that the Appellant had been billed for prejudicial use of power under Clause 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and a notice to file its objections under Clause 42.07 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. The 1st Respondent had acted as per the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and, hence, prayed this Authority to allow its claim in the interest of justice and equity.

17. While replying to the additional written response filed by the Advocate for the 1st respondent, the Appellant's representative submitted that the present case was not a case of prejudicial use of power. The Assistant Executive Engineer (Ele) Dandeli Sub-Division on 25.11.2008 issued a letter stating that back billing charges for Rs 8,61,418/ had been levied due to wrong classification of ETP. This letter said that the back billing charges had been raised on the basis of G.M (T)'s letter dated 07.11.2008. The Appellant filed objection on 01.12.2008 against back billing. Based on the objections, the Assistant Executive Engineer provided an opportunity to the Appellant to be present and file detailed objections. The Appellant appeared before the Assistant Executive Engineer on 11.12.2008 and filed objections. The Assistant executive Engineer, after considering the objections, issued a letter dated 17.12.2008 advising the Appellant to pay Rs 8,61,418/-. Aggrieved by the final bill, the Appellant approached the Managing Director, HESCOM and submitted a representation on 18.12.2008. The Managing Director, HESCOM sought clarification from KERC on the issue raised by the Appellant on 6.8.2009 and the KERC clarified the Managing Director, HESCOM that the Appellant could be advised to approach Consumer Grievance Redressal Forum for redressal of his grievance. The Appellant approached the 2nd Respondent and the 2nd Respondent passed orders upholding the bill issued by the 1st Respondent.

18. The Appellant's representative further submitted that the 2nd Respondent, in its order, had nowhere mentioned that the case related to prejudicial use of power. For that matter, the 2nd Respondent had not mentioned any of the provisions under Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. The 2nd Respondent, in its order, had observed at point 5 on page 7 that Rs.0.50 rebate had been wrongly extended to the ETP prior to November 2008.

19. Clarifying on the jurisdiction, the Appellant's representative submitted that Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka stated **"At any time during verification of the consumer's account, if any short claims caused by erroneous billing are noticed, the consumer is liable to pay the difference."** The Appellant's case fell under

Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and aggrieved person could file complaint before the Consumer Grievance Redressal Forum and appeal before the Ombudsman. Hence, the Appellant prayed this authority to set aside (a) the order passed by the 2nd Respondent and (b) the demand notice issued by the Assistant Executive Engineer(EI), Dandeli Sub Division.

20. Both parties were informed vide letter No.OMB/H/G-118/2011/162 dated 27.01.2012 regarding availability of Sub-Regulation 1 of Regulation 20 of KERC (Consumer Grievance Redressal Forum and & Ombudsman) Regulations, 2004 which provides for settlement by agreement through conciliation and mediation. However, both parties have not availed this opportunity. Hence, I am proceeding to pass an order in this matter.

21. Having regard to the contending position of the parties, the issues that emerge for our consideration are:

Whether the case falls under Section 126 of the Electricity Act, 2003 i.e. prejudicial use of power and whether the 2nd Respondent has jurisdiction to deal with the case falling under Section 126 of the Electricity Act, 2003 and Clause 42.00 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka?

or

Whether the case falls under clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and whether the 2nd Respondent is right in accepting the complaint and pass orders?

If the case falls under Clause 29.08 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and then whether the 2nd Respondent's order is in accordance with Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka?

22. In order to answer the 1st question, we will have to refer to Section 126(1) of the Electricity Act, 2003 which states ***"If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines,***

devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefitted by such use”

23. In the instant case, there is neither any inspection done by the Assessment Officer of the Appellant’s place nor any conclusion by such officer of the Appellant indulging in unauthorised use of electricity. The 1st Respondent in his notice dated 25.11.2008 served on the Appellant has stated that the General Manager (Technical), Corporate Office, Navanagar, Hubli had directed his office to issue supplemental bill to the Appellant in relation to installation bearing R.R No H.T-33 for the back period arising due to wrong billing with regard to power consumed by ETP. The G.M (Tech), HESCOM in his letter dated 07.11.2008 wrote to the Superintending Engineer(Ele), Sirsi that ***“On verification of H.T Bills of R.R. No H.T-33 running in the name of M/S Shreyas Paper Mills Ltd, Dandeli with contract demand of 1080 K.V.A, it is noticed that, the firm has got sanctioned 400000 units as additional units under K.E.R.C Rs 3.80 Special Scheme with 1,17,826 units fixed as base units and it is found that, all the units recorded in the main meter including the additional and base units are billed @ 3.80 paise/unit right from the year 2000 instead of billing the base units at different slabs of prevailing rates.”***

24. ***“In this connection, I am directed to convey the approval of Managing Director and Financial Advisor, HESCOM, to bill the above installations and raise the back billing charges right from the year 2000 as stated below.”***

25. ***“The base units of 1,17,826 units fixed for the said installation also includes E.T.P (Effluent Treatment Plant) consumption & separate meter has been fixed by the consumer to access this consumption for his records***

and this meter is not a billing meter. Hence this ETP consumption which is to be billed @ Rs 3.80 shall be included in the 1st slab itself."

26. From the extract of the G.M(T)s letter cited above, it is established, beyond doubt, that it is only during verification of "***H.T Bills of R.R No H.T 33 running in the name of M/s.Shreyas Paper Mills Ltd"*** the Licensee noticed that there had been an erroneous billing and, hence, the Appellant was liable to pay the difference."

27. Under Section 126 of the Electricity Act, 2003, if the Licensee on inspection of the premises of any person found that such person has indulged in unauthorised use of power, the Licensee shall provisionally assess to the best of his judgement the electricity charges payable by such person benefitted by such use. Since the present case has not arisen out of inspection, it can be safely construed that this case does not fall under Section 126 of the Electricity Act, 2003. Since the erroneous billing is noticed by the G.M(Tech), HESCOM during verification of the accounts of the Appellant, it can be definitely concluded that the case falls under Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. The 2nd Respondent's order appears to be devoid of logic in as much as the 2nd Respondent cannot uphold the demand notice issued by the Assistant Executive Engineer under Sub-clause (3) of Regulation 42.07 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka captioned "***Provisional Assessment Order On account of prejudicial use of power under Clause 42.01, 42.02 and 42.05."*** Any person aggrieved by the Assessment Order on account of prejudicial use of power can file appeal before the Appellate Authorities specified under Clause 44.00 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Though the GM(Tech) HESCOM wrote to the Superintending Engineer stating that, during verification of consumer's account, he has noticed short claims caused due to erroneous billing, the Asst.Executive Engineer has raised demand under Clause 42.07 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka which is highly irregular, as it ought to have been raised under 29.08 of Conditions of Supply of

Electricity of Distribution Licensees in the State of Karnataka. This shows that the 2nd Respondent is not conversant with the relevant provisions of law and their applicabilities to the case.

28. The 2nd Respondent ought to have cited the relevant Clause under which it had admitted the case and whether it has got jurisdiction or not. The instant case falls under Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and the 2nd Respondent should have cited this Clause in its Order. Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka is very clear which states that ***"At any time during verification of the consumer's account, if any short claims caused by erroneous billing are noticed, the Consumer is liable to pay the difference. The Licensee shall follow the procedure laid down under Clause 29.03 in such cases for preferring the supplemental claims."***

28. From the letter issued by the G.M (Technical) dated 07.11.2008 addressed to the Superintending Engineer, it can be seen that the HESCOM, during verification of the Appellant's accounts, has noticed the short claims caused due to erroneous billing by the Asst.Executive Engineer on account of extending Rs.0.50 rebate per unit to the Appellant's ETP from the year 2001 to 2008 though the meter fixed by the Appellant was not a billing meter and not approved by HESCOM. Findings of the GM(T), HESCOM is found to be in order as per Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Following verification of consumer's account, GM(T), HESCOM wrote to the Superintending Engineer to back bill for the period from 2001 to 2008 and, accordingly, the Assistant Executive Engineer raised back bill dated 25.11.2008 for Rs.8,61,418/- and this is found to be in order.

29. In this background, merely because the 2nd Respondent has failed to mention the relevant provisions of law in its order, it cannot be held that the 2nd Respondent has dealt with the case without jurisdiction. From the facts of the case, it is clear that the 2nd Respondent has got jurisdiction to deal with the case, as it falls under

Clause 29.08 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Hence, admission of the case and passing of the orders by the 2nd Respondent are in accordance with the law. Hence, back billing by the 1st Respondent for Rs.8,61,418/- is in order.

30. Hence this Authority does not see any strong grounds to interfere with the impugned orders of the 2nd Respondent and, hence, the following :

ORDER

For the foregoing reasons, the appeal is dismissed. In the result, the impugned order of the 2nd Respondent vide No. ~~U&E~~ U&E/CYS-4 dated 05.07.2011 **is upheld.**


(B.R. Jayaramaraje Urs)
Electricity Ombudsman

1. M/s.Shreyas Paper Mills Private Limited, No.203/A Township, Near Simpi Samaja, Dandeli-581325 (represented by Sri Pramod N.Shanbhag, AGM(E).
2. Assistant Executive Engineer, O & M Sub-Division, HESCOM, Dandeli, UK District
3. Consumer Grievance Redressal Forum, HESCOM, Keshavapura, Shivaganga Layout, Bijapur Road, Hubli-25
4. Managing Directors of all ESCOMs.
5. PS to Hon. Chairman, KERC
6. PS to Hon. Member (H), KERC
7. PS to Hon. Member (S), KERC
8. PS to Secretary, KERC
9. OCA